Minutes

JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE
December 8, 2009
10:00 a.m.
Room 1228, LEGISLATIVE BUILDING

The Joint Legislative Transportation Oversight committee met Tuesday, December 8, 2009 in Room 1228 of the Legislative Building. Senator Goss, presiding Chair called the meeting to order. The following members were present: Representative Nelson Cole, Co-Chair, Senator Neal Hunt, Senator Tony Rand, Representative Kelly Alexander, Jr., Representative Becky Carney, Representative Lorene Coates, Representative Jim Crawford, Representative Mitch Gillespie, Representative Daniel McComas, Representative Lucy Allen (Advisory Member), and Representative Arthur Williams (Advisory Member). Bob Weiss, Amna Cameron and Karlynn O'Shaughnessy of the Fiscal Research staff, Giles Perry, Committee Counsel, Daladier Miller and Anne Murtha Committee Assistants.

Chairman Goss recognized Fred Hines, Marvin Lee, Wade Anders, Curtis Dowd, Jon Fitchett and Stan Johnson of the Sergeant-At-Arms staff.

Next meeting will be Tuesday, January 19, 2010 at 10:00 a.m. in Room 544 Legislative Building. The minutes from the November 17, 2009 were approved.

The Chair introduced Burt Tasaico, State Program Analysis Engineer, DOT

PRESENTATION

BURT TASAICO, STATE PROGRAM ANALYSIS ENGINEER, DOT

A copy of Burt Tasaico's DOT Financial Update presentation is included in these minutes as Attachment #1.

Burt Tasaico outlined historical and forecasted NCDOT funding sources at State and Federal levels; talked about Cash Management Policy; and gave a rundown on stimulus funding with more detail on DOT implementation. He reviewed the charts which illustrated how the decline in the economy has affected revenue. Historical trends going back to 2001 and projected through 2011 mark the initial decline in revenues beginning in 2008/2009 and forecast 2010/2011 as flat. The revenue resources for State Fiscal Year (SFY) 2010–2011 for Transportation is at 2004 levels, the Highway Fund – used for maintenance and operation is at 2006 levels and the Highway Trust Fund is at 1998 levels with a 32% decrease in highway use to 2007 levels. DOT cumulative revenue forecast is close to their anticipated projections. These numbers were derived by the DOT through close work with the Office of State Budget and fiscal research staff on a month to month and year to year basis.
Burt Tasaico explained the Federal revenue sources and expenditures are also running low in this economy. A detailed breakdown of the figures is included in the presentation. DOT

generates 33% of their revenue through Federal funding, 92% of this is derived from the Motor Fuel Tax and 8% from other fees. To bolster funding, Congress has enacted an authorization act (SAFETEA LU) and continuing resolutions to assist with funding to all the states, the amount available is unknown. DOT cash management policy requires a cash balance of 12% of anticipated revenues with a minimum balance of 5% which equates to approximately 200M. Falling below the minimum balance will stop construction and maintenance contracts. The 36 month forecast depicts revenue within 6/10% of budget. The expenditure side is lacking in part to the stimulus bill committing funds to mandated projects in order to get to the second round. For 2011, DOT looks to manage cash back to their desired budget. The American Recovery Act slide itemizes the allocation of transportation initiatives.

The Chair recognized staff, assistants and Co-Chair, Representative Nelson Cole.

Committee discussion and questions:
Senator Hunt requested clarification about the transfer of the General Fund and the amount for 2010. Burt Tasiaco and his staff member explained that the General Fund transfer went to GAP funding in a gradual approach for the Turnpike Authority. Burt Tasiaco will get actual numbers for Senator Hunt.
Representative Cole inquired about how forecast is developed. Burt Tasiaco response: Forecast is developed by two different models based on fund source – both an annual and monthly basis with comparison between them.
Senator Goss commended Burt Tasaico for maintaining the budget at 6/10% under the current economic conditions and thanked him for his presentation.

The Chair recognized Jim Trogden, Chief Operating Officer, DOT, to come before the committee.

PRESENTATION

MR. JIM TROGDEN, CHIEF OPERATING OFFICER, DOT

Financial update: I‧485 and I‧85 proposals for Mecklenburg and Cabarrus Counties.

Jim Trogden thanked the committee and welcomed the opportunity to provide accurate information about these projects. The overall goal of the DOT in this effort is to bring needed transportation improvements to the citizens of the area and the state. I‧485 is a 72 mile loop under construction for the past 21 years, completion of the last five miles of this project is essential in improving mobility and reducing congestion in the region.
It is actually three projects:

1. Completion of the five miles of the I‧485 loop on the north side of Charlotte - estimated cost 185M
2. Tying the loop in at I‧85 with an interchange near the Charlotte Speedway - estimated cost 155M
3. Widening of I‧85 from four lanes to eight lanes from Speedway Exit into Cabarrus County approximately five miles in length – estimated cost 200M

Treating these projects simultaneously enables us to accelerate their timetable and thereby bring them to the market in the current highly competitive construction environment – total potential savings on these three projects of 100M in taxpayer money if we move ahead now. The projects will start in 2010 with completion in 2015, five years ahead of schedule for I·485 and eighteen months ahead of schedule for I·85. By employing the industry concept of Design – Build – Finance which awards construction and design work concurrently and sequentially to the contracting team, including them in the financing of the project in which they agree to a payment schedule post-construction. For the I·485 two loop segments of this project, the contracting team will supply 25M to each of those segments for a total of 50M with a payment plan to be paid out over ten years from the start of the contract.

This is not debt on the part of the state it will be part of the contract with the Design-Build team. The state does not guarantee the financing amount and the state incurs no formal obligation beyond our normal commitments to pay our bills. Of the total estimated 342M cost for these two loop portions of the project, a little more than 12% of the total cost may be financed by the contractor. There is no financing involving the widening of I·85. The amount of the financing of the two segment loops could be less, depending on the binds by the individual contractors.

An industry forum was held in the Charlotte area for these projects - over 200 people showed up - contractors, designers and financing institutions. Before announcing the project, DOT consulted with many parties and was assured there was strong interest in the design-build concept. These projects will bring immediate term economic boom to the construction industry. The projects were split into three components to make more companies eligible for the work and to spread business around. We anticipate with more bidders to generate lower bids.

DOT would like to use the Design-Build-Finance model across the state for future projects where appropriate. Innovative tools like Design-Build-Finance are needed for state infrastructure in with dwindling resources to finance projects. The General Assembly passed the law in §136-1839 in 2006 enabling us to enter into these partnerships with the private sector to finance transportation infrastructure projects. This law requires approval by the Board of Transportation for projects initiated under this legislation and to report any use of these tools on projects to the Joint Transportation Oversight Committee. Jim Trodgen thanked Co-Chair Representative Cole for his letter in the Charlotte Observer stating, "This (I-485) project is a superb example of the innovation I had hoped for in sponsoring this legislation."

Committee discussion and questions:
Senator Hunt: Is there interest charged on the maximum 50M carry? Jim Trogden: Not by the state. If a contractor requires lending, the contractor negotiates that with his private investor. We have no relationship in that arrangement. Senator Hunt: If it requires 50M, we pay 50M, not 50M plus interest. Jim Trogden: What we have are funds available during construction and funds that we can make available post construction during the term of the contract. We have planned for the worst case. Post construction payment determined by the

market. We would get various bids from each contractor. A rate is established for post construction payments for a maximum amount and is part of the negotiated contract.
Senator Goss: Will this divert funding in DOT from another project in the state? Jim Trodgen: It will not delay other projects in the state.
Senator Goss: What percentage of DOT contracts go to North Carolina contractors?
Jim Trodgen (staff): Approximately 70% go to North Carolina general contractors not including subcontractors.

Senator Goss thanked Jim Trodgen for his well thought presentation.

The Chair announced the presentations on ways to reduce construction expense. This is part of a study bill considering Life Cycle Cost Analysis when selecting project pavement types.

PRESENTATION

WAYS TO REDUCE HIGHWAY EXPENSE

LEIF WATHNE, Director of Highways, American Concrete Pavement Association, Washington, DC

JERRY REECE, Executive Director, NC Concrete Pavement Association, Greensboro, NC
A copy of the Life Cycle Cost Analysis for Pavements presentation by Leif Wathne and Jerry Reece is included in these minutes as Attachment #2.

Jerry Reece explained that this is a discussion of taxpayer stewardship and revised policy change in ways that the concrete and asphalt industries and DOT think will benefit the taxpayers of this state. We are already working on addressing the issues and details of the study. Expect to achieve the goal of an agreement and policy between the concrete and asphalt industries and DOT. Jerry congratulated DOT and Lane Construction for being awarded a National Gold Paving Award for a project on I·77 in Yadkin County.

Leif Wathne reviewed the slides explaining Life Cycle Cost Analysis (LCCA) – process for evaluating the total economic worth of a usable project segment by analyzing initial costs and discounted future costs such as maintenance, user, reconstruction, rehabilitation, restoring, and resurfacing costs, over the life of the project segment. LCCA uses real data to guide and help make best possible decisions over the long term. LCCA is a FHWA recommended best practice. The LCCA process: 1. Establish design alternatives; 2. Determine timing of activities; 3. Estimate agency and user costs; 4. Compute life-cycle costs; 5. Analyze results.
Jerry Reece applied LCCA uses for North Carolina and considerations for rigid and flexible road systems and the appropriate uses for concrete and asphalt. North Carolina has the second largest roadway system in centerline miles in the United States. The interstate system accounts for only 7.1% of our road system. Our non-instate roads are 93% and need to implement LCCA to better manage our secondary road system.
Senator Rand asked if they could use LCCA on secondary roads. Do they need us, the General Assembly, to tell them to use LCCA on secondary roads? Jerry Reece responded that LCCA for secondary road construction has not been taken to the Transportation Board.

A policy change would be necessary to effect this change. Senator Goss interjected that all interested parties need to address this question.
LCCA is also good for road maintenance projects. Example is I·26 in Asheville, NC built in 1967 with maintenance work done in 1993 and 2009. LCCA effect on competition affords a cost to benefit ratio of 1000 to 1. In summary, LCCA provides roadway ownership cost – it is the cost to own a roadway. It is independent of pavement type. In North Carolina, the LCCA process typically only occurs on the interstate systems and needs to be moved down to the lower roadway systems.

The Chair thanked Leif Wathne and Jerry Reece for their presentation and introduced Christie Barbee, Executive Director, Carolina Asphalt Pavement Association. Senator Goss emphasized this committee is not taking sides; we are considering possibilities, potential and gathering information on this issue.

CHRISTIE BARBEE, Executive Director, Carolina Asphalt Pavement Association

A copy of the presentation, Black and Green – Sustainable Asphalt, Now and Tomorrow, by Christie Barbee is included in these minutes as Attachment #3.

Christie Barbee stated that pavement selection requires a professional engineering background. The language in the study bill lists the methods to reduce construction costs and all of those methods are currently used by NCDOT when selecting and designing pavements. A committee is in place to develop a process for alternate bids that will allow contractors the flexibility to use the pavement that they can supply and construct most economically. The Carolina Asphalt Pavement Association will work in partnership with DOT and other industries to develop alternate bids to see that reality in North Carolina. A significant way we have reduced construction costs is increased use of recycled asphalt pavement (RAP). The USEPA reports that asphalt is the number one recycled material in the United States. Using RAP can reclaim liquid asphalt which allows us to use less raw material liquid asphalt and less new stone in the pavement while still safeguarding the quality of our pavement. We worked with DENR and DOT to develop rules and specifications for the use post consumer shingles (shingles torn off a home when it is reroofed). These shingles are tested for asbestos; debris is removed and is the material grinded into a fine substance that is added into the pavement mixture giving it more structure. DOT will award 6M tons of asphalt in projects this year with a projected savings of 35M.

The Chair thanked Christie Barbee for her presentation and introduced Berry Jenkins, Carolinas Associated General Contractors Highways Division Director.

BERRY JENKINS, JR., Carolinas Associated General Contractors Highways Division Director

Berry Jenkins represents a broad base group of 3,000 firms in North and South Carolina interested in the construction industry including general contractors, subcontractors, suppliers, attorneys, financial firms and accounting firms. His group does not represent or promote one product over another. He observed through close work with DOT that they have undergone some dramatic improved efforts to consider innovative ideas such as Design-

Build-Finance. Message: Let DOT do what they are trained and accredited to do. The debate between the various pavement types is not a new debate. The discussion about Life Cycle Costs is not a new discussion. DOT has a committee addressing alternate pavement processes and is already doing some alternate bidding in pavements. If the General Assembly gets involved in this, in a way other than making sure DOT is looking at the right technology and innovation, that they are cutting edge, that the General Assembly will subject themselves to a whirlwind of lobbying from all the interest groups. We need to focus on the transportation needs of North Carolina and the tremendous challenge to come up with transportation funding to support future growth patterns. Let DOT take the lead and do what is appropriate. They are having discussions with all components of the industry. Allow DOT to go through this process.

The Chair thanked Berry Jenkins for his presentation and introduced Terry Gibson, State Highway Administrator, DOT

TERRY GIBSON, State Highway Administrator, DOT

Terry Gibson assured the group that DOT is considering Life Cycle Cost Analysis (LCCA) and in the best interest of taxpayers is looking for the best product at the best cost. DOT does not favor concrete or asphalt. We want the right technology in the right place. Our goal and struggle is how we do LCCA. The problem is the industry does not agree with our process. The North Carolina Turnpike Authority will competitively bid concrete against asphalt and allow the industry to design the product based on criteria. To do that, we have to have a LCCA tool that allows the two to be compared equitably. Concrete lies there a long time, asphalt requires certain things more frequently. We pulled together as an industry group to work LCCA where we can come to an agreement. This is a painful process. The industry group is headed toward working through the issues of LCCA. DOT has recent data and forty years of experience to determine structure number and LCCA. The hope is that this committee will allow DOT to work through this and report back to you on our progress.

The Chair thanked Terry Gibson for his presentation and invited the four presenters to answer questions.

Committee discussion and questions:
Representative Coates: How many companies in North Carolina have concrete pavement operations in the state and how many companies have asphalt pavement operations? Jerry Reece: Concrete Operations - Directly and indirectly over 300,000 people in the state derive their income from the cement and concrete industry. People who do mainline interstate and airport type contracting – there are two companies that do mainline contracting. Christie Barbee: Asphalt Operations - There are 49 asphalt producers in North Carolina, all but one do asphalt pavement. There are also a number of asphalt paving contractors that do smaller work.
Senator Goss: Are there any companies in North Carolina that have divisions that do both asphalt and concrete? Jerry Reece: There are two companies in the state that do both asphalt and concrete.
Representative Alexander: Which one of these products, as we analyze energy, requires more energy on the front end? Looking at environmental impact – durability does not make it more

it more energy efficient to use. Terry Gibson: DOT is trying to tackle environmental and sustainability. Do not have that answer for you today.
Representative Alexander: If one product is lighter than another, one is going to absorb more energy than another. Senator Goss: DOT will have to research this more and let us know. Leif Wathne: The National Highway Research Program has several studies about life cycle impact upstream and the entire overall operational life cycle.
Senator Hunt: When DOT analyzes LCCA, is the major question what discount rate to apply to future costs? What is the major issue? Terry Gibson: We look at initial cost and how often we have to come back and maintain it. Consider user costs, impact to the public, traffic control, drainage issues, upfront cost of concrete is higher for concrete.
Representative Gillespie: What is the initial upfront cost of new construction of concrete? Terry Gibson: We will get back to you with an answer.

The Chair thanked and commended all the presenters and introduced Ronald G. Kaylor, Jr., Director, License and Theft Bureau, DMV to discuss Out of Trust Sales.

PRESENTATION

MR. RONALD G. KAYLOR, JR., DIRECTOR, LICENSE AND THEFT BUREAU, DMV

A copy of Ronald Kaylor's Dealer Out of Trust presentation is included in these minutes as Attachment #4.

Ronald Kaylor defined Dealer Out of Trust: Dealer borrows money for inventory on a vehicle by vehicle basis (lending practice called floor plan financing). Dealer sells the vehicle but does not repay the lender dealing out of trust. "Out of Trust" refers only to the status of the financed inventory. When you buy a car, the dealer does not have access to your title that he just sold you. Ronald reviewed red flag indicators when a dealer is out of trust. Out of trust issues began to increase with the beginning of the recession. As of November 2009, 62 dealers are out of trust. DMV license and theft has identified 861 consumers as innocent victims of "out of trust" dealers. DMV working with District Attorneys offices have resolved 341 cases. Potential improvements to handle Dealer Out of Trust: Develop and improve STARS Dealer Application to identify dealers who floor plan and consign vehicles and provide more information about dealers in our database. Require a fee for each vehicle sold by a dealer specifically used to support the trust fund. Require dealers to provide annual credit scores and set a minimum threshold as lending institutions require – dealers would have to maintain good credit standings with their lenders.

Committee discussion and questions:
Senator Goss: Before the recession, what would be an average year for dealers being out of trust? Ronald Kaylor: The average number of dealers out of trust was 10 to 12 a year before the recession.
Representative Coates: How does a consumer keep from dealing with an out of trust dealer? Ronald Kaylor: Most dealers operate lawfully. Some get into this situation unintentionally. Factors that contribute to this problem: the rapid pace of transactions, internet sales, out of

state transactions and safeguards not being met. It is best to purchase a vehicle from a franchise dealer.
Representative Cole: How does a consignment agreement differ from a normal wholesale agreement? Joseph Gardner, Deputy Director License and Theft Bureau, DMV: A consignment agreement is a means by which the consumer can use for a dealer to sell their car.
Representative Cole: Cars sold at auctions out of state where the title is being held by the auction or the company that is floor planning the vehicle is against our law. How do we resolve the issue of making the title available in the hands of the dealer? Are these auctions aware of our law? Joseph Gardner: We do not allow dealers to consign vehicles. They have to have a floor plan contract. The only consignment contracts would be with individuals.
Representative Cole: Don't we require the dealer to have the title available to transact business on site? Joseph Gardner: Yes, the dealer is required to have the title available.
Representative Cole: These out of state finance companies is where the issue comes up – How do we force that floor plan company to have the title? Should the dealer have to disclaim the fact that they do not have the title? Joseph Gardner: Under the administrative code of North Carolina, the floor planner is required to maintain the title within the boundaries of North Carolina.
Senator Goss: We may want to require on-line registration through each dealer - that puts the information out front. How many automobile dealers in North Carolina? Joseph Gardner: There are approximately 8,000 auto dealers in North Carolina.
Representative Allen: What is the penalty for someone who does this intentionally? Ronald Kaylor: It is a felony. The person would be arrested and sent to jail.
Representative Cole: Finance companies within the state who know they have dealers out of trust will usually have someone on the dealership premises to pass the title when they get the check.
Senator Goss: This issue is definitely a problem.

The Chair thanked Ronald Kaylor, Joseph Gardner and the other presenters for their presentations and wished everyone a happy holiday season.

The meeting adjourned at 11:45 a.m.

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Senator Steve Goss, Co-Chair Representative, Nelson Cole, Co-Chair

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Anne R. Murtha, Committee Assistant